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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1776/2009 – SM [BR] Date **13/01/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S HINDUSTAN COCA COLA BEVERAGES PVT. LTD.

5TH KM STONE, MASURI-GULAOTHI ROAD,
GHAZIABAD, (U.P.)

M/S HINDUSTAN COCA COLA BEVERAGES PVT. LTD. Appellant

Vs

C.E.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 46 / 2011- **SM[BR]** dated 6.1.2011

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)
2. Adv. / Consult SHRI SHIRIN KHAJURIA ADV.
S-336, FF GERATER KAILASH PART-II
NEW DELHI -110001.
3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
9. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1776 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 122-CE/MRT-II/2009 dated 25.2.2009 passed by the Commissioner of Central Excise (Appeals), Meerut]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Hindustan Coca Cola Beverages Pvt. Ltd. Appellants

Vs.

Commissioner of Central Excise Meerut II Respondent

Appearance:

Ms. Shirin Khajuria, advocate for the Appellants
Shri Krishna Pratap Singh, SDR for the Respondent

Date of Hearing/decision : 06.01.2011

Final **ORAL ORDER NO. 46/2011 SM(BR)**

Per M. Veeraiyan:

1. This is an appeal against the order of the Commissioner (Appeals) No. 122-CE/MRT-II/2009 dated 25.2.09. The matter is before the Tribunal for the second time having been remanded to the original authority by the order of the Tribunal dated 14.5.07.

2. The dispute now narrowed down to eligibility of credit of Rs.96,048/- which was taken by the appellant on the basis of original invoice No. 74 dated 23.4.99, on the ground that they have lost the duplicate copy. The other dispute relates to eligibility of credit of Rs.4,46,654/- taken on 14.10.99 on the basis of bills of entry dated 26.2.1999 and 4.3.99 that is after six months with reference to dates of bill of entry though the entry relating to receipt of goods have been made in Part I of RG 23 A register on 5.4.99 and 6.4.99.

3.1 Learned advocate submits that the duplicate invoice accompanying the consignment was lost in transit. They had promptly informed the jurisdictional Assistant Commissioner by their letter dated 25.2.99 and taken the credit based on original invoice. There is no dispute about the duty paid nature of the goods and receipt of the goods in their factory and utilisation of the same for the intended purpose. Under these circumstances denial of credit holding that the Assistant

Commissioner was not satisfied about the loss of duplicate copy of invoice is not justified. She also relies on the decision of the Tribunal in the case of JCT vs. CCE, Jalandhar reported in 2005 (192) ELT 571 (Tri) and in the case of CCE vs. Avis Electronics Pvt. Ltd. reported in 2000 (117) ELT 571(Tri-LB)].

3.2 Regarding the denial of credit on the ground that credit has been taken after six months from the dates of bill of entry, she further submits that they have promptly taken receipt of the goods in part I of the Cenvat account on 5.4.99 and 6.4.99 and it was a clerical omission in not taking the credit in part II. Therefore, the credit should not be denied. She relied on the decision of the Tribunal in the case of Banner Pharma Caps Pvt. Ltd. vs. CCE, Vapi reported in [2009 (246) ELT 364 (Tri-Ahmd)].

4. Learned SDR submits that as per Rule 57G sub rule (6), credit could be taken on the basis of original invoice only if duplicate copy of invoice has been lost in transit and the loss has been established to the satisfaction of the Assistant Commissioner. Since the appellants have failed to satisfy the same, the credit is not available. In this regard he relies on the decision of the Tribunal in the case of CCE vs. Avis Electronics Pvt. Ltd. [2000 (117) ELT 571(Tri-LB)] (para 8) wherein it has been held that taking of credit on the basis of original copy can be done only if the concerned Assistant Commissioner is satisfied about the loss of duplicate copy in transit. He also relied on the decision in the

case of Nestle India Ltd. vs. CCE, Chandigarh reported in [1998 (99) ELT 443] wherein it has been held that original invoices is not a valid document for the purpose of taking the credit.

5. I have carefully considered the submissions from both sides and perused the records.

6. The appellants have intimated the jurisdictional Assistant Commissioner that the copy of the invoice No. 74 dated 23.4.99 which was to accompany the transporter was lost in transit and therefore, they are proposing to avail the credit on the basis of original invoice. The cases relied upon by the department are not cases where there were such intimations sent to the Assistant Commissioner. Rule 57 G(6) specifically permits taking of credit on the basis of original invoices in certain circumstances. No doubt, the same is subject to satisfaction of the Assistant Commissioner. When the appellants have lost the duplicate invoice and have duly intimated the jurisdictional Assistant Commissioner, in the absence of any finding that the appellants have not received the material or that material was not duty paid, the reason for not being satisfied with the explanation is not forthcoming. Therefore, the denial of credit in the given circumstances is not justified.

7. Rule 57 G(5) bars taking of credit after six months from the date of the relevant documents, in the present case, the triplicate copy of bills of entry. Taking of credit involves two steps i.e. entering the receipt of goods in part I of the Cenvat credit account and taking credit

as per the relevant documents in part II. In the present case, undisputedly the appellants have fulfilled the first part of the formality within the specified time. In other words, receipt of the duty paid goods stands entered in the Cenvat credit account within the specified time limit. Non mention of the duty amount in part II of the account is apparently a clerical omission and no malafide is attributable. Infact the assessee was the looser, if at all, as they were entitled to take the credit earlier and utilise the same.

8. In Banner Pharma Caps Pvt. Ltd., the Tribunal has allowed the credit in respect of consignment which was received and entered in part I Cenvat account within 6 months from the relevant date though the actual credit in Part II was taken belatedly. In view of the above, the denial of credit is not justified.

9. In view of the foregoing, the order of the Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief as per law.

(M. Veeraiyan)
Member(Technical)

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